IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 05-09-2007

CORAM

THE HONOURABLE MR.JUSTICE S.PALANIVELU

CRIMINAL ORIGINAL PETITION Nos.25533 & 25538 OF 2007

1.Irwin Moses
2.Ryan Moses
3.Lyndon Moses
4.Hosana Moses .... Petitioners in
Crl.O.P.No.25533/2007

1.Irwin Moses
2.Hosana
3.Ryan Moses
4.Lyndon Moses
5.Aruna .... Petitioners in
Crl.O.P.No.25538/2007

-vs-

1.The State, rep.by the Sub-Inspector of Police,
Arakkonam Town Police Station,
Arakkonam, Vellore District.

2.Mrs.Latha Elizabeth @ Latha ... Respondents in
Crl.O.P.No.25533/2007

1.The State, rep.by the Inspector of Police,
All Women Police Station,
Arakkonam.

2.Mrs.Latha Elizabeth @ Latha ... Respondents in
Crl.O.P.No.25538/2007

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Petitions under Section 482 of the Code of Criminal Procedure.

For petitioners : Mr.R.Singaravelan
For respondent 1: Mr.A.Saravanan,
Govt.Advocate (Criminal Side).
For respondent 2 : Mr.R.Barathkumar

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O R D E R

In both the petitions, the parties are same. First petitioner is the husband of second respondent, who is the de facto complainant in both the cases. Other petitioners are family members.

2. On 18.01.2005, there was a scuffle between the family members, in which the petitioners are reported to have hurled filthy language at second respondent, besides assaulting her. Hence, a case under Sections 294 (B), 323 and 325 IPC came to be registered in Crime No.96 of 2005 on the file of Arakkonam Town Police Station. Subsequently, after investigation, charge sheet was laid against the petitioners for the offences under the above said Sections.

3. On 23.01.2005, the second respondent lodged another complaint with the police, alleging that the first petitioner, her husband, was perpetrating cruelty on her and that she gave birth two children, one male and one female, through the first petitioner, by means of wedlock; in the year 2003, the first petitioner contacted second marriage with fifth petitioner by name Aruna; on 28.03.2004, she delivered a female child and since there was a demand of dowry and matter of bigamy, a case was registered in Crime No.2 of 2005 under Sections 498 (A), 494, 294 (B) and 506 (II) IPC and both the cases are pending for trial.

4. After preferring these petitions before this Court, the spouses, namely, first petitioner and second respondent entered into a compromise, by means of which they wholeheartedly wanted to settle the disputes and misunderstandings between them finally and both of them came forward to give a quietus to the estrangement. Both of them appeared before this Court and expressed their willingness for the compromise and requested this Court to record the terms and conditions stipulated in the compromise memo, filed in both the cases. The said terms are as under :

> (a) The 2nd respondent agrees to receive a sum of Rs.1,00,000/- from the 1st petitioner to end the disputes between them.
>
> (b) The 1st petitioner has paid a sum of Rs.1,00,000/- by way of pay order No.037161 dated 16.08.2007 drawn on Union Bank of India, Arakkonam, to the 2nd respondent and the 2nd respondent hereby acknowledge the receipt of the said sum of Rs.1,00,000/- and thereafter the 1st petitioner agrees to pay Rs.25,000/- within 6 months from the date of compromise agreement.
>
> (c) The 1st petitioner agrees to pay a sum of Rs.1,000/- each and every month for the maintenance of the child namely NATASHA PAMEELA MOSES who is with the 2nd respondent till the marriage of the child namely NATASHA PAMEELA MOSES.

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(d) If the 1st petitioner fails to pay the amount mentioned in Clause (b) and (c) as above, the 2nd respondent shall have the right to initiate proceedings to recover the same.

(e) The 2nd respondent shall not pursue the Criminal Cases initiated by her in C.C.No.203 of 2005 and 501 of 2005 on the file of Judicial Magistrate, Arakkonam, against the 1st petitioner and his family members namely (1) Irwin Moses (2) Hosanna Moses (3) Ryan Moses (4) Lydan Moses and Aruna, who are the petitioners 2 to 5 herein and the 2nd respondent agreed for quashing of the above criminal proceedings."

5. Heard the learned Government Advocate (Criminal Side).

6. Learned counsel for the petitioners would submit that when any criminal cases pending between the spouses and in case they settle the matter during the pendency of the cases, the settled law paves way to allow the parties to compound non-compoundable offence and in exercise of inherent power, the High Court may quash the proceedings, to meet the ends of justice. The proposition of law is illuminatingly highlighted in the decision of the Hon'ble Supreme Court in B.S.Joshi and Others v. State of Haryana and Another, 2003 Supreme Court Cases (Cri) 848, in the following lines :

"In the present case, the wife filed an affidavit that the FIR was registered at her instance due to temperamental differences and implied imputations. There may be many reasons for not supporting the imputations. In such eventuality, there would almost be no chance of conviction. So, it would not be proper to decline to exercise power of quashing on the ground that it would be permitting the parties to compound non-compoundable offences. It would, however, be a different matter if the High Court on facts declines the prayer for quashing for any valid reasons including lack of bona fides. Further, in Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre, (1988) 1 SCC 692, it was held that while exercising inherent power of quashing under Section 482, it is for the High Court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. The special features in such matrimonial matters are evident. It becomes the duty of the court to encourage genuine settlements of matrimonial disputes."

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7. In the said judgment, Their Lordships have held that if for the purpose of securing ends of justice, quashing of FIR becomes necessary, Section 320 Cr.P.C. would not be a bar to the exercise of power of quashing and merely because the said provision enumerates non-compoundable offences, the Court cannot decline to exercise the power of quashing and that such non-exercise of inherent power would prevent women from settling earlier.

8. Guided by the principles formulated in the above said ruling and considering the special features, which are evident, it is to be held in this case, being a matrimonial one, that the Court is duty bound to encourage genuine settlement of matrimonial disputes. If a sacred ceremony of a marriage is affected by some skirmishes, which arise between the spouses, and re-union is not possible, and their relationship is irretrievably strained, in case the Court finds that the compromise entered into between them is a genuine one, there is no stumbling block for the Court to entertain the same and in order to avoid future heart-burns between them and take the own course of life without reference to the other after they got separated, it is just and necessary to recognise the settlement entered into between them. Declining to entertain such a request from both the spouses, taking the hyper-technical view and considering the proviso under Section 320 Cr.P.C., would be counter productive.

9. Under the circumstances and following the dicta laid down by the Hon'ble Apex Court, in order to meet the ends of justice, the memo of compromise, arrived at between the first petitioner and the second respondent, is recorded and accepted and the proceedings in C.C.Nos.203 and 501 of 2005 on the file of Judicial Magistrate, Arakkonam, are hereby quashed.

10. Criminal Original Petitions are allowed. Consequently, the connected Crl.M.P.Nos.1 and 2 of 2007 in both the petitions are closed.

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sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1. The Judicial Magistrate,
   Arakkonam

2.The Sub-Inspector of Police,
   Arakkonam Town Police Station,
   Arakkonam, Vellore District.

3.The Inspector of Police,
   All Women Police Station,
   Arakkonam.

4. The Public Prosecutor
   High court Madras.

+ 2 cc to Mr.R.Singgaravelan Advocate SR.NO.55511.55510

LA(CO)
RD 13.9.07

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